

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. ██████████ 300

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PACIFIC LIVE STOCK COMPANY, APPELLANT,

JOHN H. LEWIS, JAMES T. CHINNOCK, AND GEORGE F. COCHRAN, CONSTITUTING THE STATE WATER BOARD OF THE STATE OF OREGON, ET AL.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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FILED DECEMBER 10, 1914.

(24,468)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 724.

PACIFIC LIVE STOCK COMPANY, APPELLANT,

vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, AND GEORGE T. COCHRAN, CONSTITUTING THE STATE WATER BOARD OF THE STATE OF OREGON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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*a* In the United States District Court for the District of Oregon.

No. 6463.

PACIFIC LIVE STOCK COMPANY (a Corporation), Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon; C. B.  
McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
provement Company (a Corporation); Silvies River Irrigation  
Company (a Corporation), and William Hanley Company (a  
Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Defend-  
ants.

United States of America to John H. Lewis, James T. Chinnock, and  
George T. Cochran, constituting the State Water Board of the  
State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole;  
Harney Valley Improvement Company (a corporation); Silvies  
River Irrigation Company (a corporation), and William Hanley  
Company (a corporation); R. R. Sitz, Fred Otley, and M. B.  
Hayes:

You are hereby cited and admonished to be and appear at the  
Supreme Court of the United States, to be held at the City of Wash-  
ington, in the District of Columbia, on the 21st day of December,  
1914, pursuant to an order allowing appeal herein wherein the  
Pacific Live Stock Company (a corporation) is appellant and you  
are appellees, to show cause, if any there be, why the final decree in  
the said order allowing appeal mentioned should not be corrected  
and speedy justice should not be done to the parties in that  
behalf.

*b* Witness the Honorable R. S. Bean, United States District  
Judge, Ninth Judicial District, this 23rd day of November,  
1914, and of the Independence of the United States, the one hundred  
and thirty-nine.

R. S. BEAN,  
*United States District Judge.*

Service of the within citation by copy admitted this 23 day of November, 1914.

A. M. CRAWFORD,

*Attorney General of the State of Oregon,  
Representing John H. Lewis, James T.  
Chinnock, and George T. Cochran, Con-  
stituting the State Water Board of the  
State of Oregon.*

C. E. S. WOOD,

*Solicitor and of Counsel for Defendants  
Harney Valley Improvement Company,  
Silvies River Irrigation Company, and  
William Hanley Company.*

A. M. CRAWFORD,

*Solicitor and of Counsel for Defendants  
C. B. McConnell, Emory Cole, and  
Leonard Cole.*

J. W. BIGGS,

*Solicitor and of Counsel for Defendants  
R. R. Sitz, Fred Otley, and M. B. Hayes.*

*c* [Endorsed:] No. 6463. In the United States District Court for the District of Oregon. Pacific Live Stock Company (a corporation), Complainant, vs. John H. Lewis et al., Defendants. Citation. U. S. District Court. Filed Dec. 5, 1914. G. H. Marsh, Clerk, District of Oregon. Edward F. Treadwell, Attorney-at-Law, 1323 Merchants Exchange Building, San Francisco, California.

1 In the Supreme Court of the United States.

PACIFIC LIVE STOCK COMPANY, a Corporation, Appellant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a Corporation); Silvies River Irrigation Company (a Corporation), and William Hanley Company (a Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Appellees.

*Names and Addresses of the Attorneys of Record.*

Edward F. Treadwell, Merchants Exchange Building, San Francisco, California, and John L. Rand, Baker, Oregon, for the Appellant.

A. M. Crawford, Attorney General for the State of Oregon, Salem, Oregon, Wood, Montague and Hunt, Spalding Building, Portland, Oregon, Emmons & Webster, Yeon Building, Portland, Oregon, J. W. Biggs and C. B. McConnell, Burns, Oregon, and George T. Cochran, La Grande, Oregon, for the Appellees.

## 1½ In the District Court of the United States for the District of Oregon, March Term, 1914.

Be it remembered, That on the 22nd day of June, 1914, there was duly filed in the District Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

## 2 In the United States District Court for the District of Oregon.

No. 6463.

PACIFIC LIVE STOCK COMPANY (a Corporation), Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a Corporation); Silvies River Irrigation Company (a Corporation), and William Hanley Company (a Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Bill of Complaint.*

Now comes the complainant above named and files this, its bill of complaint, against the defendants above named and for cause of action alleges:

## I.

That at all times herein mentioned the plaintiff above named has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, and at all times has been and now is a citizen and resident of the State of California.

## II.

That at all times herein mentioned the defendant John H. Lewis has been and now is the State Engineer of the State of Oregon, and the defendants James T. Chinnock at all times herein mentioned

3 has been and now is Superintendent of Water Division No. 1 of the State of Oregon, and the defendant George T. Cochran

now is and at all times herein mentioned has been Superintendent of Water Division No. 2 of the State of Oregon, and the said defendants, John H. Lewis, James T. Chinnock and George T. Cochran now do and at all times herein mentioned have constituted the State Water Board of the State of Oregon; that prior to the year 1913 the said Board was known and called the Board of Control of the State of Oregon, and during said time the defendants aforesaid constituted the said board; that at all times herein mentioned the said defendants Lewis, Chinnock and Cochran have been and now are citizens and residents of the State of Oregon.

## III.

That at all times herein mentioned the defendants Harney Valley Improvement Company (a corporation), Silvies River Irrigation Company (a corporation) and William Hanley Company (a corporation) were and now are, and each of them was and now is, a corporation organized and existing under and by virtue of the laws of the State of Oregon, and were and are citizens and residents of the State of Oregon.

## IV.

That the defendants R. R. Sitz, Fred Otley and M. B. Hayes, Emory Cole, Leonard Cole and C. B. McConnell, are and have been at all times herein mentioned citizens and residents of the State of Oregon.

## V.

That at all times herein mentioned the plaintiff herein has been the owner of a large tract of land situate in Harney Valley, Harney County, State of Oregon, and generally known and referred to as the Island Ranch, consisting of upwards of twenty thousand (20,000) acres of land, and has also been and now is the owner of another large tract of land situate in Silvies Valley in the County of Harney

and County of Grant, in the State of Oregon, generally referred to as the Silvies Valley Ranch, consisting of upwards of six thousand (6,000) acres of land; that both of said parcels of land lie along and border upon the Silvies River and its tributaries, and the said river now flows and from time immemorial has flowed by through, over and upon the said land, and for many years last past the said complainant has taken, diverted and used the waters of the said Silvies river, and its tributaries, for the irrigation of the said land, and for the watering of stock, and other purposes, and at all times herein mentioned the said plaintiff has claimed the right to take, divert and use the water of the said river and its tributaries for the irrigation of the said land, the watering of stock and other beneficial purposes.

## VI.

That heretofore and in the year of 1908, this complainant filed its bill of complaint in this honorable court against the defendants herein, Harney Valley Improvement Company (a corporation) and Silvies River Irrigation Company (a corporation) alleging that the said defendants threatened to take, appropriate and divert away from the said river and away from the lands of the complainant a large amount of the water of the said Silvies River to the great damage of complainant and prayed that the said defendants be enjoined and restrained from taking, diverting or appropriating any of the waters of the said river above the lands of said complainant, or any thereof, and thereafter the said defendants duly appeared and answered the said bill of complaint, denying the rights of the said complainant as alleged in its bill of complaint and claiming the right to take, divert and carry away a large amount of the water of the said river

and asking that their right to do so be adjudged in their favor and as against said complainant; that thereafter complainant duly filed its replication in due form of law to the answer aforesaid, and the  
 5 said suit has ever since been and now is at issue, pending and undetermined in this honorable court, and said suit involves all of the rights of the said complainant herein in and to the waters of the said Silvies River and all of the rights claimed by the defendants Harney Valley Improvement Company and Silvies River Irrigation Company in and to the waters of the said river as against the said complainant.

### VII.

Heretofore and in the year 1908 this complainant filed in this honorable court its bill of complaint against the William Hanley Company (a corporation) alleging that the said defendant was taking and diverting from the said Silvies River and was maintaining structures in the said river and in the banks thereof which were interfering with and encroaching upon the rights of the said complainant in and to the waters of the said Silvies River, and praying that the said defendant be enjoined and restrained from continuing such taking, diversion and use of said waters, and from maintaining the other structures in and upon the said river which were complained of by the said complainant; that thereafter the said defendant William Hanley Company duly appeared and filed its answer to the said bill of complaint, claiming the right to divert and use certain waters of said river and to maintain and operate said structures and works in and upon the said river, and denying that the same unlawfully interfered with the rights of the complainant; that thereafter the said complainant duly filed its replication to said answer and said suit has ever since been and now is pending and undetermined in this honorable court, which said suit involves all of the rights of the said complainant as against the said William Hanley Company and all of the rights of the said William Hanley Company in and to the waters of the said River as against said complainant; and said rights so in litigation as aforesaid are still pending and undetermined in said suit in said court.

6

### VIII.

That heretofore and on the 18th day of November, 1911, R. R. Sitz, Fred Otley and M. B. Hayes filed a petition with said Board of Control of the State of Oregon, setting forth that they were users of the waters of the said Silvies River and that the waters of said stream and its tributaries were claimed by various claimants and praying that a determination of the relative rights of the various claimants to the said waters of said stream and its tributaries be made by said State Board of Control.

### IX.

That on the 22nd day of January, 1912, the said State Board of Control made and entered and order "In the matter of the determination of the relative rights in and to the waters of Silvies river, a

tributary of Malheur Lake" for the determination of the relative rights to the waters of said river and directing that the State Engineer proceed to make the surveys and examination of said stream as provided by law, and that the Superintendent of Water Division No. 1 should commence the taking of testimony and report the various claims to the waters of said stream on the 26th day of August, 1912, at Silvies, on the 28th and 29th of August at Burns, on the 31st day of August, 1912, at Lawen, and from the 5th day of September to the 5th day of December, 1912, at La Grande; thereupon the said Board caused to be published a notice setting forth therein the date when the State Engineer would begin an investigation of the flow of the stream and ditches diverting water therefrom, and the place and time when the superintendent of the water division in which the stream was situated would begin the taking of testimony as to the rights of the parties claiming water therefrom, which dates and places were as set forth in the aforementioned order, and said notice was published in two issues of one or more newspapers having general circulation in the counties in which said stream was situated thereafter the said division superintendent of said division sent by

7 registered mail to each person, firm or corporation claiming the right to the use of any water of said stream and to each person, firm or corporation claiming or in possession of land bordering upon and having access to said stream or its tributaries insofar as such claimants could reasonably be ascertained, a similar notice setting forth therein when the State Engineer or his assistant would begin the examination of said stream and the ditches diverting water therefrom and also the date when said superintendent would take testimony as to the rights of the waters of said stream and said dates were in accordance with the order above referred to and said notice was mailed at least thirty days prior to the date set forth therein for the taking of said testimony; that one of said notices was so mailed to complainant herein, who is and at all times herein has been a claimant to the waters of said river and also owning and possessing land bordering upon and having access to said stream and its tributaries; that in and by the terms and provisions of the act of the Legislature of the State of Oregon creating the said State Board of Control and providing for the proceedings above set forth it is provided that any person owning or claiming any right in and to the waters of said stream who shall fail to appear and file his claim in response to such notice in the manner provided by said act shall be deemed to have lost and forfeited all rights in and to the said stream and the waters thereof.

## X.

Thereafter and on the 26th day of July, 1912, and within the time in which the complainant was required to appear in the said matter in accordance with the laws of the State of Oregon, this complainant duly filed with the said Board of Control a petition for the removal of the said proceedings in and to this honorable court, in which petition all of the proceedings aforesaid were set up and alleged, and in which it was also alleged that said petitioner was a citizen and res-

dent of the State of California; that the said R. R. Sitz, Fred Otley and M. B. Hayes were citizens of the State of Oregon, and that the controversy between the said R. R. Sitz, Fred Otley and M. B. Hayes, on the one part, and the said Pacific Live Stock Company, on the other, was a controversy wholly between citizens of different states and which could be fully determined between them, and in that behalf said petition alleged that said Pacific Live Stock Company claimed to have theretofore taken and appropriated a large amount of water of Silvies River and its tributaries and petitioner alleged that it had theretofore taken and diverted a large amount of the water of Silvies River and its tributaries and had applied the same to beneficial uses, to-wit: the irrigation of land, watering of stock and domestic purposes, and that the said petitioners R. R. Sitz, Fred Otley and M. B. Hayes likewise claimed that they had taken and appropriated from Silvies River certain waters thereof and applied the same to beneficial uses and that the Pacific Live Stock Company claimed that its appropriation of the said water was prior in time and superior in right to any right of the petitioners R. R. Sitz, Fred Otley and M. B. Hayes, and alleged that in fact its said appropriation and use of said water was prior in time and superior in right to any appropriation of said petitioners Sitz, Otley and Hayes, but that the said petitioners denied the appropriation by the said Pacific Live Stock Company of the amount of water claimed to have been appropriated by it and denied that said appropriation was prior in time and superior in right to the appropriation and use of the said water by the petitioners Sitz, Otley and Hayes, and that the controversy between the said Pacific Live Stock Company and the said Sitz, Otley and Hayes involved the extent of the appropriations by the said Pacific Live Stock Company, on the one hand, and the said petitioners Sitz, Otley and Hayes on the other, and the relative priority thereof in point of time, and therefore in point of right, and that said controversy was a severable controversy between the said Pacific Live Stock Company and the said petitioners Sitz, Otley and Hayes, and that the said controversy could be fully determined as between them, and that the said matter in controversy, exclusive of costs of suit, exceeding in value the sum of three thousand dollars.

## XI.

That prior to the filing of the said petition for removal and on the 16th day of July, 1912, the said Pacific Live Stock Company duly served upon the said petitioners Sitz, Otley and Hayes a written notice that the said petition would be filed, together with the bond required, with said Board on the 26th day of July, 1912, at the hour of ten o'clock A. M. of said day at the office of said Board of Control in the Capitol Building in the City of Salem, State of Oregon, and thereafter and on the 26th day of July, 1912, at said hour and place the said petition was duly filed with the said Board of Control, together with the bond in the sum of one thousand dollars in favor of the said Sitz, Otley and Hayes, and duly executed by two sureties on behalf of the said Pacific Live Stock Company, conditioned that the

said Pacific Live Stock Company should enter in said District Court of the United States within thirty days from the date of filing such petition for removal a certified copy of the record in said suit or proceeding, and should pay all costs that might be awarded by the said District Court if the said court should hold that such proceedings were wrongfully or improperly removed thereto, and at the same time there was filed with said board notice of said application as aforesaid, together with due proof of the service thereon upon the said petitioners, Sitz, Otley and Hayes, and thereafter and within thirty days the said Pacific Live Stock Company duly filed in this honorable court a certified copy of the entire record in the said proceeding, and thereupon removed the same into this honorable court.

## XII.

Thereafter a motion was filed in this honorable court by the said

10 R. R. Sitz, Fred Otley and M. B. Hayes, and others, setting forth that said proceeding was not a judicial proceeding but was an administrative proceeding before the State Board of Control, and praying that the said suit or proceeding be remanded to the said State Board of Control, and thereafter this honorable court made its order declaring that the said suit or proceeding was not a judicial proceeding but was an administrative proceeding before the State Board of Control and remanding the said proceeding to the State Board of Control.

Thereafter the said Pacific Live Stock Company duly filed before the said State Board of Control a statement of its claims in and to the waters of the said Silvies River in the form required by the said statutes of the State of Oregon, and at the time of filing the same protested and stated that it filed the same under protest, claiming that said statute was unconstitutional and in violation of the Constitution of the State of Oregon and of the United States; that the rights of the said Pacific Live Stock Company as against the said William Hanley Company, Silvies River Irrigation Company and Harney Valley Improvement Company and the rights of the last mentioned companies as against the Pacific Live Stock Company in and to the waters of the said river were then pending and undetermined in said suits in this court, and also protesting against having its rights determined by the State Board of Control, or by the courts of the state of Oregon, and protesting against being deprived of its right to have its rights in and to the said waters determined by the United States courts in and for the State of Oregon, and it expressly filed the said statement of claim without waiving its right to have the said matters so determined and without waiving its claim that the said proceeding had been duly removed in and to this honorable court, and without waiving its right to have the same tried therein, all of which protest and claims were set forth and reserved in said statement of claim;

11 Thereafter and within the time fixed by the said Board of Control, two hundred and four people claimed rights in and to the waters of said Silvies River, likewise filed statements of their claims in and to the waters of the said river with the said State

Board of Control, and among the parties so filing said claims the defendants herein R. R. Sitz, Fred Otley and M. B. Hayes, Harney Valley Improvement Company, Silvies River Irrigation Company, and William Hanley Company, C. B. McConnell, Emory Cole and Leonard Cole, all filed their several statements of their claims in and to the waters of the said river, and its tributaries, and all of said defendants set forth in said claims their alleged right to take, appropriate and divert a large quantity of the waters of the said river above the land of complainant, and all of the said two hundred and four claimants and each of them set forth that they had taken appropriated and diverted, or had a right to take, appropriate, and divert a large quantity of water from the said river above the lands of said complainant.

### XIII.

That as a matter of fact the said State Board of Control took no testimony whatever as to the rights of the various parties to the waters of the said river at the times or places set forth in the said notice so published by the said State Board of Control, but the said State Board of Control at that time simply accepted and received *ex parte* written statements of claims of the various parties claiming rights in and to the waters of the said stream and the said Board of Control has construed the Act of the Legislature of the State of Oregon to mean that at such time no evidence shall be taken by witnesses called and examined and cross-examined by the parties in interest at that time, but that the only evidence that will be received by the Board at said time shall be the *ex parte* statements in writing as aforesaid; and the said Board has adopted a rule that no 12 other testimony will be taken or heard at said time and no testimony has been taken by the said Board in said proceeding other than said *ex parte* statements of the claims of said parties.

### XIV.

Thereafter the said Board of Control gave notice of the time within which contests could be filed to the claims so filed as aforesaid, and within the time so fixed this complainant filed a protest and reserving all of the objections which it had made at the time of filing its statement of claim as aforesaid, filed contests to all of said claims so filed as aforesaid, alleging that the said parties have not appropriated any of the waters of the said Silvies River, that they had not appropriated the amount of water stated in their claim; that their only rights in and to the waters of the said river were as riparian owners; that whatever rights they had were subject to the rights of the Pacific Live Stock Company; that the rights of the said William Hanley Company, Harney Valley Improvement Company and the Silvies River Irrigation Company were pending in said suits in this court, which suits were filed in abatement of said proceedings, and that there was no water that could be appropriated by said defendants Emory Cole, Leonard Cole and C. B. McConnell without serious injury to the rights of complainant.

## XV.

That likewise within the time fixed by the said Board of Control, the following named claimants to the waters of said river, to-wit: H. B. Simmons, J. P. Reeter, Gustav A. Rembold, Henry Luig, Homer B. Mace, and J. A. Eberle, William Soutgworth, Minnie Soutgworth, Webster Soutgworth, J. C. Oliver & Son (a copartnership), J. C. Oliver, Frank Oliver, Herman Oliver, Ira Sproul, David E. Helmick, G. E. Keller, Margaret Keller, Almons B. Guernsey, Lorenzo D. de Wolf, Thomas F. Dunten, W. H. Lincoln, Walter Cross, Lawrence Shepherd, Nellie Hardesty, H. A. Dillard, J. C. Welcome, Jr., N. Brown, Ben Brown, Leon M. Brown, Allen 13 Jones, Grant Thompson, J. C. Welcome, Sr., A. C. Welcome, E. P. Silvester, James Pirie, T. F. Matney, T. G. Houser, M. B. Hamesm, J. Lampshire, J. T. Barnes, J. H. Bunyard, H. J. Hansen, W. M. Stewart, R. R. Sitz, Blanch Sitz, J. T. Baker, D. M. Varien, F. O. Jackson, C. E. McPheters, Caliedonia Culp, Charles Walker, C. E. Parker, E. L. Swinney, J. L. Gault, J. M. Parker, Sam Mothershead, G. A. Rembold, W. A. Goodman, A. S. Swain, Lloyd Johnson, M. B. Holliday, C. B. Ausmus, Daniel Jordan, C. H. Leonard, Dave Craddock, George Craddock, John Craddock, Ben Craddock, William Bennett, Ida B. Bennett, A. Wintermeier, William E. Smith, Timothy Donovan, Joseph H. Hill and James H. Bunyard, all filed various and sundry separate contests against the various rights set up and claimed by this complainant, Pacific Live Stock Company, and denying and contesting the rights claimed by it and claiming rights superior to it.

Likewise within the time fixed by said Board of Control, the defendants herein, Harney Valley Improvement Company, and Silvies River Irrigation Company filed contests to the rights of the said Pacific Live Stock Company, denying the rights alleged and claimed by it, and setting up and claiming against it the same rights set up by the said companies in the said suit brought by the Pacific Live Stock Company against said companies and now pending in this honorable court.

## XVI.

Likewise, within the time fixed by the State Board of Control, the said defendants Emory Cole, Leonard Cole and C. B. McConnell, filed contests to the claims of the said Pacific Live Stock Company denying its rights and claiming the right to take, appropriate and divert a large quantity of the water of the said river above the lands of the said Pacific Live Stock Company.

## XVII.

Likewise, within the time fixed by the said State Board of Control, a large number of others of the said claimants, filed additional contests to the claims set forth by various parties above named, other than the Pacific Live Stock Company herein.

## XVIII.

That the said defendants constituting the State Board of Control

claim the right to institute the proceeding herein alleged and referred to and claim the right to declare the rights of all parties in and to the waters of said river forfeited and lost who do not appear and file their statement of claims in accordance with the act creating the State Board of Control, and claim the right to allow and approve any claims filed by other parties which are not contested by any one claiming rights in or to the said river and claim the right to ascertain and adjudicate the rights of all parties in or to the said river and after such adjudication to actually take possession of the said stream, and all headgates and weirs in and upon the same, and to distribute the said water in accordance with its adjudication in case any party having a claim to the said water does not appear to file his claim the said Board of Control would consider his right forfeited and would forcibly close his headgates, weirs and structures used for the diversion of water and would prevent him from taking or diverting any water of the said stream, and the said Board has likewise adopted a rule that if any claim is filed which in fact is unfounded and that "if such claim goes uncontested and a shortage occurs your headgate will be closed and the water allowed to flow down to satisfy such right which should in fact be subsequent"; that if the said complainant herein did not appear in the said proceeding and file its statement of claim the said Board would have declared its rights forfeited, would have adjudicated and allowed it no water whatever, and after its adjudication or ascertainment the said Board would have actually and forcibly used the power of the state to forcibly and actually deprive complainant of any water whatever, and to give, allot and distribute it to the other persons irrespective of the rights of complainant; that likewise if the said complainant had not contested the claims made by the said parties claiming waters of the said river the said Board would have allotted 15 to them and adjudged to them the amount so claimed by them and would have forcibly delivered the said water to them and forcibly taken the same away from complainant.

### XIX.

That although the said complainant was required by the provisions of the said Act of the Legislature of the State of Oregon to file its said statement of claim, on pain of forfeiting its rights, when said complainant sent the said statement of its claims to the said Board of Control for filing the said Board refused to accept, receive or file the same unless the said plaintiff paid the said Board a sum of money in excess of five hundred dollars and the said complainant, in order to file the same and prevent the said Board from declaring a forfeiture of its rights, and in order to prevent the said Board from using the power of the State to actually take and deprive complainant of its rights in and to the waters of the said river, the said complainant was compelled to, and did, under protest, involuntarily pay to the State Board of Control the said sum exceeding five hundred dollars in order to get the said Board to file the said statement of claim as aforesaid, and the same was paid by complainant under protest then and there made in writing that the said demand was

extortionate and deprived complainant of its property without due process of law, and deprived complainant of the equal protection of the law.

Complainant further alleges that the said State Board of Control now threatens to and will unless restrained by this honorable court proceed to set a time and place for the hearing of all of the contests aforesaid and will proceed to compel the parties to produce evidence in support of said contests and in support of all of their rights in and to the waters of the said river alleged in the said contests and which contests do involve all the rights of all parties in and to all of the waters of the said Silvies River; that the said rights 16 involve the diversion and use of water for a period exceeding thirty (30) years and by more than four hundred different people: that the State Board of Control has adopted a rule requiring the contestant in each contest to first produce his evidence in support of his grounds of contest and the said State Board of Control in said rule will require this complainant to affirmatively prove all of the allegations of its contests or will dismiss the same for lack of such proof and under its rules and regulations will require this complainant to affirmatively prove the amount of water appropriated and the date of appropriation of each of the parties numbering over two hundred which have been contested by complainant, and will likewise compel complainant to affirmatively establish all of its own rights in and to the waters of the said river covering a period of more than thirty years and initiated by numerous parties to whose rights complainant is successor; that the said Harney Valley, Silvies Valley and the said Silvies River are situated in one of the most inaccessible places in the United States, far removed from railroads and reached only by stage and the witnesses involved in said matter are largely scattered over the western states and the cost of finding, transporting and caring for witnesses to prove the rights of plaintiff alone would probably not be less than five thousand dollars; that the cost of subpoenaing, procuring, transporting and securing witnesses to prove the rights and the extent of the rights of the two hundred separate claimants to the waters of said river probably would not be less than five thousand dollars, and probably would far exceed that amount, even if it would be possible to secure witnesses to negative the claims of said two hundred parties which burden has been cast upon contestant; that the cost of obtaining certified copies of the various deeds, patents, muniments of title and records of the state land office and the United States Land Office showing the acquisition of title of plaintiff's land in order to show the riparian character thereof, and also to show the transfer of the rights initiated by other parties to complainant will not be less than one thousand dollars; that the cost of obtaining certified copies of the proceedings in the various suits pending in the United 17 States courts involving the rights of the various parties in and to the waters of said river, together with the testimony therein, would cost not less than two thousand dollars; that in order to meet the claim of said two hundred separate claimants in and to the waters of the said river, as well as to support the claims of com-

plainant, it would be necessary to have elaborate surveys made of the entire territory covered by said irrigation, which surveys would cost not less than five thousand dollars; that in taking the testimony relating to the said matter and to the two hundred and fifty-nine separate contests which have been filed, the fees of reporting and transcribing said testimony, would not be less than ten thousand dollars; that beside the foregoing, complainant will be compelled to employ attorneys to conduct said contests and to attend upon the taking of evidence therein for probably a year or more, and in the preparation of the argument of said contests, and in arguing said matter to the said Board, and the expense of such legal services would not be less than ten thousand dollars, and would probably greatly exceed that sum; that the total cost to the complainant of properly presenting its rights and contesting the rights claimed by others in case the said contest was proceeded with as aforesaid would not be less than fifty thousand (50,000) dollars, and the amount of costs which the other parties to said proceeding might ultimately charge to complainant it is impossible for complainant to estimate, but it would probably exceed the sum of ten thousand dollars, and probably be greatly in excess thereof.

That the sole purpose of the aforesaid proceeding before the State Board of Control is for the purpose of obtaining and adjudicating that there is in the said Silvies River a quantity of water over and above the amount to which complainant is entitled which may be appropriated and diverted and taken away from the said river by the said Harney Valley Improvement Company, Silvies River Irrigation Company, Leonard Cole, Emory Cole and C. B. McConnell, and being the same matter involved in the said suits so pending in the federal courts as aforesaid, and the sole purpose of the said proceedings is to get an adjudication by the State Board of Control that there is surplus water over and above the rights of complainant which may be taken by the public and by the particular members of the public before mentioned, and the said adjudication is made entirely for the benefit of those seeking to take the water so claimed by complainant, and by other parties claiming to have rights in and to the waters of said river, and to allow the public to take and appropriate the same, and in the said Act of the Legislature of the State of Oregon the entire expense of the ascertainment determination or adjudication of the said State Board of Control is thrown entirely upon the complainant and other persons claiming rights in and to the waters of said stream and unless the said complainant meets the demands of the said act and spends the money aforesaid it will be declared to have forfeited its rights and the said rights will be adjudicated to the said claimants other than complainant and the State Board of Control will use the power of said State of Oregon to forcibly take and allot the said water to such parties and to prevent the said complainant from thereafter taking or enjoying the use of any of the waters of the said stream: that the said act of the Legislature of the State of Oregon and the said actions of the defendants herein taken tend to and do deprive the complainant of its property without due process of law in violation of

the fourteenth amendment to the Constitution of the United States, and deprive complainant of the equal protection of the law in violation of the fourteenth amendment to the Constitution of the United States, and deprive complainant of its property without due process of law in violation of the fifth amendment to the Constitution of the United States; that if the said proceeding is not a judicial proceeding, but merely an administrative proceeding, complainant is compelled to expend said money simply for the purpose of preventing the state, without a judicial hearing in the tribunals provided by the Constitution of the United States, or by any judicial proceeding, from 19 forcibly taking possession of property of complainant, and still said adjudication or ascertainment will not be binding or conclusive either in favor of or against complainant, and can be disregarded by any party thereto, and in case the said proceeding and adjudication by the State Board of Control in such administrative proceeding should be thereafter certified in the courts of the State of Oregon and should be held to still remain an administrative proceeding in said courts such adjudication will not be binding upon or against complainant and could not be relied upon by it in support of or to protect its rights, and if held thereafter to become a judicial proceeding complainant would be entitled to have the same removed into the federal court, and in that event all of the testimony taken before the State Board of Control would be of no force, effect or virtue in the federal courts, and complainant would be entitled to not only have its rights determined by the said federal court but likewise entitled to have the testimony respecting its rights taken under the sanction of law and under the rules and practice prevailing in said federal courts and all of the said expense in taking said evidence and proof would be lost to complainant.

That the defendants herein, other than the said Board of Control, threaten to and will, unless restrained and enjoined by this honorable court, proceed to take testimony in the said proceeding notwithstanding the prior jurisdiction of this honorable court in the suits now pending therein and above referred to, and notwithstanding the aforesaid proceeding for the removal of the said case into this honorable court, and the other contestants mentioned in this complaint likewise threaten to and unless enjoined by this honorable court will proceed to hear and determine the said contests and to compel complainant to produce evidence in support thereof, and to hear the same; that the number of the said claimants is so large that it is impracticable, inconvenient and would be extremely expensive to make all of the said persons parties to this suit, but the parties named herein as plaintiffs and defendants fairly represent all 20 classes of persons who are interested in the waters of the said river and the said suit is brought against them not only personally but as representative of all of the parties claiming interests in and to the waters of the said river, and the said defendants are fairly representative of every class of claimants to the waters of the said river.

## XX.

That all of the said claimants, other than complainant, in and to the waters of the said Silvies River, who have filed claims thereto as aforesaid, and whose rights have been contested or who have contested the rights of complainant, are citizens and residents of the State of Oregon, and were at all of the times herein mentioned, and none of them are citizens or residents of the State of California.

## XXI.

That the amount in dispute herein, to-wit: the rights of the complainant in and to the waters of the said river, exceeds the sum of five thousand dollars, and the matter in dispute herein, to-wit: the amount of property of which the said complainant will be deprived by the acts herein complained of, exceeds the sum of five thousand dollars.

## XXII.

That the complainant has no plain, speedy, adequate or other remedy in the ordinary course of law, and unless the said defendants are enjoined from the proceedings aforesaid, complainant will suffer great and irreparable injury, and will be deprived of its property without due process of law, its property will be taken for a public use without just compensation, and it will be deprived of the equal protection of the law; that a large amount, to-wit: many thousands of acres of land of complainant above described passed from the United States government to the State of Oregon upon its admission to the Union as swamp land and as school land, and all of said lands were and are riparian to the said Silvies River and its tributaries, and have all of the rights in and to the waters of the said river belonging to such riparian lands and by virtue of such riparian right

21      entitled to the use and benefit of the waters of the said river for irrigation, watering of stock and other purposes; said lands are entitled to all of the natural advantages growing out of said situation and location with respect to the flow of the said river, and all of said lands have, for more than thirty (30) years before the date hereof, passed from the State of Oregon to complainant, together with all of the riparian rights incident to the said lands, and that for more than thirty years complainant has so taken, diverted, used and enjoyed the waters of the said river so riparian to the said land and its right to so take and use the water vested in complainant long before the passage of the act of the State of Oregon creating the said State Water Board.

That on and upon other portions of the said lands the said complainant and its predecessors and grantors have for more than thirty (30) years last past taken, diverted, appropriated and used a large part of the waters of the said river for the irrigation of the said lands, and all the waters so appropriated by the said complainant, its predecessors and grantors was taken, diverted and appropriated long before the passage of the said act of the legislature of the State of Oregon, and all of said rights were vested property rights of the

complainant long before the passage of the said act; that all of said rights so owned by complainant as a riparian owner and also all of said rights so owned by complainant as an appropriator as aforesaid were duly set forth in its claim in and to the waters of said river so filed by it with the State Board of Control as aforesaid, and all of said property rights of complainant are being infringed upon, and will be infringed upon by the acts of the defendants as aforesaid.

Wherefore complainant prays that the said defendants and each of them, and also all of the parties who have filed claims and contests in the said matter of the adjudication of the waters of Silvies River, be enjoined and restrained from taking any further proceedings therein; that they be enjoined and restrained from proceeding with

or hearing the said contests, or from making or attempting  
22 to make any adjudication of the rights of the complainant herein in and to the waters of the said river.

That they be enjoined and restrained from declaring any of the rights of complainant forfeited, or otherwise affected by the said proceeding; that they be enjoined from taking away or in any way interfering with any of the rights of complainant in and to the waters of said river by the proceeding aforesaid.

May it please the court to grant unto complainant a writ of subpoena directed to each of the defendants, John H. Lewis, James T. Chinnock and George T. Cochran, constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a corporation) Silvies River Irrigation Company (a corporation), William Hanley Company (a corporation) R. R. Sitz, Fred Otley, and M. B. Hayes, and that each of the said defendants be required to answer said bill of complaint, but not under oath, the benefit whereof is hereby waived.

May it please the court that pending the trial of the said cause to grant to complainant a writ of injunction pendente lite enjoining and restraining the said defendants during the pendency of said suit from doing any of the acts aforesaid.

JOHN L. RAND,  
EDWARD F. TREADWELL,  
*Solicitors for Complainant.*

23 STATE OF CALIFORNIA,  
*City and County of San Francisco, ss.:*

J. Leroy Nickel, being first duly sworn, deposes and says: that he is the vice-president of the complainant in the above entitled suit and makes this verification in its behalf; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on information or belief and as to such matters believes it to be true.

J. LE ROY NICKEL.

Subscribed and sworn to before me this 19th day of June, 1914.

[SEAL.]

JAMES MASON,  
*Notary Public in and for the City and County  
of San Francisco, State of California.*

Filed June 22, 1914. A. M. Cannon, Clerk.

24 And afterwards, to wit, on Monday, the 22nd day of June, 1914, the same being the 97th Judicial day of the Regular March, Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

25 In the United States District Court for the District of Oregon.

PACIFIC LIVE STOCK COMPANY (a Corporation), Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a Corporation); Silvies River Irrigation Company (a Corporation), and William Hanley Company (a Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Order as to Service of Subpæna.*

It being necessary to serve the subpæna in the above entitled suit in Harney County, State of Oregon, and there being no deputy United States Marshal at that place, it is Ordered that I. H. Holland be, and he hereby is designated as the person authorized and empowered to serve the subpæna in said cause.

Dated: This 22nd day of June, 1914.

R. S. BEAN,  
*District Judge.*

Filed June 22, 1914. A. M. Cannon, Clerk.

26 And afterwards, to wit, on the 22nd day of June, 1914, there was issued out of said court Subpœnas ad Respondendum, which with the returns of service thereof are in words and figures, as follows, to wit:

27 DISTRICT OF OREGON,  
*County of Harney, ss:*

I, I. H. Holland, being first duly sworn, say:

That on the 30th day of June, 1914, in the County of Harney, State and District of Oregon, I served the above named defendant, C. B. McConnell with the within and hereto attached subpœna ad respondendum by delivering to him in person a copy thereof duly certified to be a true copy thereof by A. M. Cannon Clerk of the above entitled court;

And that on said 30th day of June, 1914 I duly served the above named defendant, Silvies River Irrigation Company with the within subpœna ad respondendum in Harney County, State and District of Oregon, by delivering a copy thereof to William Miller, the secretary of said Silvies River Irrigation Company, a corporation, in person, said copy being duly certified to be a true and correct copy by A. M. Cannon, Clerk of the above entitled court;

And that on the 2nd day of July, 1914 in the County of Harney, State and District of Oregon, I served the above named defendant, William Hanley Company, a corporation, with the within and hereto attached subpœna ad respondendum by delivering a copy thereof duly certified to be a true copy thereof by A. M. Cannon, Clerk of the above entitled Court;

And that on the said 2nd day of July, 1914, in the County of Harney, State and District of Oregon, I served the above named defendant, M. B. Hayes, with the within and hereto attached subpœna ad respondendum by delivering to him in person a copy thereof duly certified to be a true copy thereof by A. M. Cannon, Clerk of the above entitled court;

And that on the 6th day of July, 1914, in the County of Harney, State and District of Oregon, I served the above named defendant, Fred Otley, with the within and hereto attached subpœna ad respondendum by delivering to him in person a copy thereof duly certified to be a true copy thereof by A. M. Cannon, Clerk of the above entitled court;

And that on the 6th day of July, 1914, in the County of Harney, State and District of Oregon, I served the above named defendant, R. R. Sitz, with the within and hereto attached subpœna ad respondendum by delivering to him in person a copy thereof duly certified to be a true copy thereof by A. M. Cannon, clerk of the above entitled court.

I. H. HOLLAND.

Subscribed and sworn to before me this 18th day of July, 1914.

[SEAL.]

A. C. WELCOME,  
*Notary Public for Oregon.*

28 In the District Court of the United States for the District of Oregon.

No. 6463. In Equity.

PACIFIC LIVE STOCK COMPANY, a Corporation, Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon; C. B.  
McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
provement Company (a Corporation); Silvies River Irrigation  
Company (a Corporation), and William Hanley Company (a Cor-  
poration); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Subpœna ad Respondendum.*

The President of the United States of America to John H. Lewis,  
James T. Chinnock, George T. Cochran, C. B. McConnell, Emory  
Cole, Leonard Cole, Harney Valley Improvement Co., Silvies River  
Irrigation Co., William Hanley Co., R. R. Sitz, Fred Otley, and  
M. B. Hayes, Greeting:

You, and each of you, are hereby commanded that you be and  
appear in said District Court of the United States, at the Court Room  
thereof, in the City of Portland, in said District, on the 13 day of  
July, A. D. 1914, to answer the exigency of a Bill of Complaint  
exhibited and filed against you in our said Court, wherein Pacific  
Live Stock Company is complainant, and you are defendants, and  
further to do and receive what our said District Court shall consider  
in this behalf, and this you are in no wise to omit under the pains  
and penalties of what may be all thereon.

And this is to command you, the Marshal of said District, or your  
Deputy, to make due service of this our Writ of Subpœna ad Re-  
spondendum and to have then and there the same.

Witness the Honorable Charles E. Wolverton, Judge of said Dis-  
trict Court, and the seal thereof, at Portland, in said District this  
22 day of June A. D. 1914, and of the Independence of the United  
States, the One hundred and thirty-eighth.

[SEAL.]

A. M. CANNON, *Clerk,*  
By F. L. BUCK, *Deputy.*

MEMORANDUM.—Pursuant to Equity Rule No. 12 of the Supreme  
Court of the United States, the defendant is required to file his  
answer or other defense in the above entitled suit in the office of the  
Clerk of said Court on or before the twentieth day after service in-  
cluding the day thereof; otherwise the Complainant's Bill therein  
may be taken *Pro confesso.*

[Endorsed:] Returned and filed July 22nd, 1914. A. M. Cannon,  
Clerk, by — — —, Deputy Clerk.

*Return on Service of Writ.*

UNITED STATES OF AMERICA,  
*District of Oregon, ss:*

I hereby certify and return that I served the annexed Subpœna ad Respondendum on the therein-named John H. Lewis—constituting a member of the State Water Board of the State of Oregon—by handing to and leaving a true and correct copy thereof with him as such member personally at Salem in said District on the 3rd day of July, A. D. 1914.

JOHN MONTAG,  
*U. S. Marshal,*  
 By S. C. ARMITAGE,  
*Deputy.*

29 In the District Court of the United States for the District of Oregon.

No. 6463. In Equity.

PACIFIC LIVE STOCK COMPANY (a Corporation), Complainant,  
 vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
 Constituting the State Water Board of the State of Oregon; C. B.  
 McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
 provement Company (a Corporation); Silvies River Irrigation  
 Company (a Corporation), and William Hanley Company (a Cor-  
 poration); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Subpœna ad Respondendum.*

The President of the United States of America to John H. Lewis,  
 James T. Chinnock, George T. Cochran, C. B. McConnell, Emory  
 Cole, Leonard Cole, Harney Valley Improvement Co., Silvies River  
 Irrigation Co., William Hanley Co., R. R. Sitz, Fred Otley, and  
 M. B. Hayes, Greeting:

You, and each of you, are hereby commanded that you be and  
 appear in said District Court of the United States, at the Court Room  
 thereof, in the City of Portland, in said District, on the 13 day of  
 July, A. D. 1914, to answer the exigency of a Bill of Complaint  
 exhibited and filed against you in our said Court, wherein Pacific  
 Livestock Company is complainant, and you are defendant, and  
 further to do and receive what our said District Court shall consider  
 in this behalf, and this you are in no wise to omit under the pains  
 and penalties of what may be all thereon.

And this is to command you, the Marshal of said District, or your  
 Deputy, to make due service of this our Writ of Subpœna ad Re-  
 spondendum and to have then and there the same.

Witness the Honorable Charles E. Wolverton, Judge of said District Court, and the seal thereof, at Portland, in said District this 22 day of June A. D. 1914, and of the Independence of the United States, the One hundred and thirty-eighth.

[SEAL.]

A. M. CANNON, *Clerk*,  
By F. L. BUCK, *Deputy*.

**MEMORANDUM.**—Pursuant to Equity Rule No. 12 of the Supreme Court of the United States, the defendant is required to file his answer or other defense in the above entitled suit in the office of the Clerk of said Court on or before the twentieth day after service including the day thereof; otherwise the Complainant's Bill therein may be taken *Pro confesso*.

[Endorsed:] Returned and filed July 6th, 1914. A. M. Cannon, Clerk, by — — —, Deputy Clerk.

30 And Afterwards, to wit, on the 13th day of July, 1914, there was duly filed in said Court, a Demurrer of Harney Valley Improvement Company, et al., to the Bill of Complaint, in words and figures as follows, to wit:

31 In the United States District Court for the District of Oregon.

No. 6463.

PACIFIC LIVESTOCK COMPANY, a Corporation, Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company, a Corporation; Silvies River Irrigation Company, a Corporation and William Hanley Company, a Corporation; R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Demurrer to Complaint.*

The Joint and Several Demurrsers of Harney Valley Improvement Company, a Corporation; Silvies River Irrigation Company, a Corporation, and William Hanley Company, a Corporation.

These defendants appearing by protestation, and not confessing nor acknowledging any of the matters or things in said Complainant's bill of complaint to be true, in such manner or form as the same are therein set forth and alleged, do demur to said bill of complaint on the following grounds, and each of them:

I.

That it appears from the facts set forth in said bill of complaint that complainant is not entitled to the relief, nor any part thereof, prayed for, from or against these defendants nor any of them.

## II.

That the facts as set out in said bill of complaint do not state a cause of suit, nor any part of a cause of suit against these defendants, nor any of said defendants.

Wherefore, and for divers other good causes of demurrer  
32 appearing in said bill, these defendants demur thereto, and  
pray the judgment of this Honorable Court whether they  
shall be compelled to make any answer to said bill; and they humbly  
pray to be hence dismissed, with their reasonable costs in this behalf  
sustained.

C. E. S. WOOD,  
RICHARD W. MONTAGUE,  
ISAAC HUNT,  
ERSKINE WOOD,

*Solicitors and Counsel for Defendants Harney  
Valley Improvement Company, a Corpora-  
tion; Silvies River Irrigation Company, a  
Corporation, and William Hanley Company,  
a Corporation.*

I hereby certify that the foregoing demurrer is in my opinion  
well founded in point of law, and is not interposed for delay. Dated  
at Portland, Oregon, July 11th, 1914.

C. E. S. WOOD,  
*Of Attorneys for Defendants Wm.  
Hanley Co., by Wm. Hanley.*

Filed July 13, 1914. A. M. Cannon, Clerk.

33 And Afterwards, to wit, on the 13th day of July, 1914,  
there was duly filed in said Court, a Demurrer of C. B. Mc-  
Connell, et al., to the Bill of Complaint, in words and figures as  
follows, to wit:

34 In the United States District Court for the District of Oregon.  
No. 6463.

PACIFIC LIVESTOCK COMPANY, a Corporation, Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon; C. B.  
McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
provement Company, a Corporation; Silvies River Irrigation Com-  
pany, a Corporation, and William Hanley Company, a Corpora-  
tion; R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Demurrer to Complaint.*

The Joint and Several Demurrers of C. B. McConnell, Emory Cole,  
and Leonard Cole.

These defendants appearing by protestation, and not confessing  
nor acknowledging any of the matters or things in said complainant's  
bill of complaint to be true in such manner or form as the same are  
there set forth and alleged, do demur to said bill of complaint on  
the following grounds, and each of them:

I.

That it appears from the facts set forth in said bill of complaint  
that complainant is not entitled to the relief, nor any part thereof,  
prayed for, from or against these defendants nor any of them.

II.

That the facts as set out in said bill of complaint do not state a  
cause of suit, nor any part of a cause of suit against these defendants,  
nor any of said defendants.

Wherefore, and for divers other good causes of demurrer appear-  
ing in said bill, these defendants demur thereto, and pray the  
35 judgment of this Honorable Court whether they shall be  
compelled to make any answer to said bill, and they humbly  
pray to be hence dismissed, with their reasonable costs in this behalf  
sustained.

A. M. CRAWFORD,  
C. B. McCONNELL,  
*Solicitors and of Counsel for Defendants*  
*C. B. McConnell, Emory Cole, and*  
*Leonard Cole.*

I hereby certify that the foregoing demurrer is in my opinion  
well founded in point of law.

Dated Portland, Oregon, July 13, 1914.

C. B. McCONNELL,  
*Attorney for Defendants.*

UNITED STATES OF AMERICA,

*State of Oregon, County of —, ss:*

C. B. McConnell, being duly sworn, deposes and says: I am one of the above named defendants; the foregoing demurrer is not interposed for delay.

C. B. McCONNELL.

Subscribed and sworn to before me this 13th day of July, 1914.

[SEAL.]

ERSKINE WOOD,  
*Notary Public for Oregon.*

Filed July 13, 1914. A. M. Cannon, Clerk.

36 And Afterwards, to wit, on the 13th day of July, 1914, there was duly filed in said Court, a Demurrer of R. R. Sitz, et al., to the Bill of Complaint, in words and figures as follows, to wit:

37 In the United States District Court for the District of Oregon.

No. 6463.

PACIFIC LIVESTOCK COMPANY, a Corporation, Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company, a Corporation; Silvies River Irrigation Company, a Corporation, and William Hanley Company, a Corporation; R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Demurrer to Complaint.*

The Joint and Several Demurrsers of R. R. Sitz, Fred Otley, and M. B. Hayes.

These defendants appearing by protestation, and not confessing nor acknowledging any of the matters or things in said complainant's bill of complaint to be true, in such manner or form as the same are therein set forth and alleged, do demur to said bill of complaint on the following grounds, and each of them:

I.

That it appears from the facts set forth in said bill of complaint that complainant is not entitled to the relief, nor any part thereof, prayed for, from or against these defendants nor any of them.

II.

That the facts as set out in said bill of complaint do not state a cause of suit nor any part of a cause of suit against these defendants, nor any of said defendants.

38 Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants demur thereto, and pray the judgment of this Honorable Court whether they shall be compelled to make any answer to said bill; and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

J. W. BIGGS,  
*Solicitor and of Counsel for Defendants*  
*R. R. Sitz, Fred Otley, and M. B. Hayes.*

I hereby certify that the foregoing demurrer is in my opinion, well founded in point of law, and is not interposed for delay.

Dated Portland, Oregon, July 13th, 1914.

J. W. BIGGS,  
*Of Attorneys for Defendants.*

I hereby certify that I served the within demurrer by mail upon John L. Rand one of the solicitors for Complainant on July 13th, 1914.

J. W. BIGGS,  
*Attorney for Def'ts Sitz, Hayes, and Others.*

Filed July 13, 1914. A. M. Cannon, Clerk.

39 And Afterwards, to wit, on the 22nd day of July, 1914, there was duly filed in said Court, a Notice of Application for Injunction pendente lite, in words and figures as follows, to wit:

40 In the United States District Court for the District of Oregon.

PACIFIC LIVESTOCK COMPANY (a Corporation), Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a Corporation); Silvies River Irrigation Company (a Corporation); William Hanley Company (a Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Notice of Application for Injunction Pendente Lite.*

To the defendants in the above entitled suit:

You and each of you will please take notice that on Monday the 3rd day of August, 1914, the complainant in the above entitled — will move said court for an injunction pendente lite in said cause enjoining the defendants from taking any further proceedings in the proceeding referred to in the bill of complaint herein, enjoining and restraining them from proceeding with or hearing the contests referred to in said bill of complaint and from making or attempting

to make any adjudication of the rights of complainant in and to the waters of Silvies River, and enjoining and restraining them from declaring any of the rights of the complainant in and to the said river forfeited, or otherwise affected by said proceeding, or from taking away or in any way interfering with the rights of the complainant in and to the waters of the said river by the proceeding aforesaid.

Said motion will be made upon the verified bill of complaint on file herein.

Said motion will be made on the ground that unless the said injunction is granted pending the said action, said complainant will suffer great and irreparable injury.

JOHN L. RAND,  
EDWARD F. TREADWELL,  
*Solicitors for Complainant.*

42     DISTRICT OF OREGON,  
*County of Baker, ss:*

I, John L. Rand, one of attorneys for complainant in the above entitled suit, do hereby certify that on the 23rd day of June, 1914, I deposited in the U. S. Post Office at Baker, Oregon, in an envelope postage prepaid thereon addressed "John H. Lewis, Salem, Oregon," a true copy of the hereto attached and foregoing notice of application for injunction pendente lite;

And that on said day I deposited in the U. S. Post Office at Baker, Oregon, in an envelope postage prepaid thereon addressed "James T. Chinnock, Salem, Oregon," a true copy of the hereto attached and foregoing notice of application for injunction pendente lite;

And that on said day I deposited in the U. S. Post Office at Baker, Oregon, in an envelope postage prepaid thereon addressed "George T. Cochran, La Grande, Oregon," a true copy of the hereto attached and foregoing notice of application for injunction pendente lite.

The addresses above stated being the respective places of residence and addresses of each of said above named defendants, John H. Lewis, James T. Chinnock and George T. Cochran.

JOHN L. RAND,  
*One of Attorneys for Complainant.*

43     DISTRICT OF OREGON,  
*County of Harney, ss:*

I, I. H. Holland, being first duly sworn, say:

That I served the within and hereto attached notice of application for injunction pendente lite in the County of Harney, State and District of Oregon, on the following named persons, to-wit:

On the 30th day of June, 1914, on the above named defendant, C. B. McConnell, by delivering to him a true copy thereof;

On the 30th day of June, 1914, on the above named defendant, Silvies River Irrigation Company, by delivering a true copy thereof to William Miller, the Secretary of said Company;

On the 2nd day of July, 1914, on the above named defendant,

William Hanley Company, by delivering a true copy thereof to William Sterling, the Managing Agent of said Company;

On the 2nd day of July, 1914, on the above named defendant, M. B. Hayes, by delivering to him a true copy thereof;

On the 6th day of July, 1914, on the above named defendant, Fred Otley, by delivering to him a true copy thereof; and

On the 6th day of July, 1914, on the above named defendant, R. R. Sitz, by delivering to him a true copy thereof.

I. H. HOLLAND.

Subscribed and sworn to before me this 18th day of July, 1914.

[SEAL.]

A. C. WELCOME,  
Notary Public for Oregon.

Filed July 22, 1914. A. M. Cannon, Clerk.

44 And afterwards, to wit, on Monday, the 3rd day of August, 1914, the same being the 25th Judicial day of the Regular July Term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

45 In the District Court of the United States for the District of Oregon.

No. 6463.

PACIFIC LIVESTOCK COMPANY

v.

JOHN H. LEWIS et al.

AUGUST 3, 1914.

Now, at this day, come- the plaintiff by Mr. Edward F. Tredwell, and Mr. John L. Rand, of counsel for the plaintiff and the defendants by Mr. A. M. Crawford, of counsel; whereupon said plaintiff moves the Court for a decree pro confesso against the defendants above named; whereupon, it is Ordered that said defendants be, and they are hereby, allowed to amend the *the* several pleadings filed by them so that the same shall be motions to dismiss the bill of complaint herein; and that said motion for a decree pro confesso be, and the same is hereby denied; and thereupon it is Ordered that this cause be, and the same is hereby set for hearing upon application of said plaintiff for temporary injunction herein for Monday, August 31, 1914.

46 And afterwards, to wit, on the 3rd day of September, 1914, there was duly filed in said Court, a Motion of the State Water Board, et al. to dismiss the Bill of Complaint, in words and figures as follows, to wit:

47 In the United States District Court for the District of Oregon.

PACIFIC LIVESTOCK COMPANY, a Corporation, Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon; C. B.  
McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
provement Company (a Corporation); Silvies River Irrigation  
Company (a Corporation), and William Hanley Company (a Cor-  
poration); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Motion to Strike Out Bill of Complaint.*

The Joint and Several Motions of the State Water Board, C. B.  
McConnell, Emory Cole, and Leonard Cole to the Bill of Com-  
plaint Herein.

These defendants appearing by protestation and not confessing or  
acknowledging any of the matters or things in said bill of complaint  
to be true, in such manner or form as the same are therein set forth  
and alleged, do move to strike out the bill of complaint on the fol-  
lowing grounds and each of them:

**L**

That it appears from the facts set forth in said bill of complaint,  
that complainant is not entitled to the relief, nor any part thereof,  
prayed for, from or against these defendants, nor any of them.

**II.**

That these facts as set out in said bill of complaint do not state a  
cause of suit, nor any part of a cause of suit against these defendants,  
nor any of said defendants.

48

**III.**

That there is a defect non-joinder of parties defendant herein as  
shown and named in the bill of complaint, paragraph 45, page 12,  
who have each, as alleged in said paragraph, filed various and sep-  
arate sundry contests against the various rights set up and claimed  
by complainant, denying and protesting its rights and claiming  
rights superior to it, and each of said persons so named are necessary  
parties defendant herein, if this Court retains jurisdiction of this  
cause.

Wherefore, and for divers other good causes of demurrer appearing  
in said bill, these defendants move thereto and pray the judgment  
of this Honorable Court whether they shall be compelled to make  
any answer to said bill, and they humbly pray to be hence dismissed,  
with their reasonable costs in this behalf sustained.

A. M. CRAWFORD,  
C. B. McCONNELL,

*Solicitors and of Counsel for Defendants.*

I hereby certify that the foregoing motion is, in my opinion, well founded in point of law.

Dated Salem, Oregon, September 2nd, A. D. 1914.

A. M. CRAWFORD,  
*Of Attorneys for Defendant.*

49 STATE OF OREGON,  
*County of —, ss:*

Receipt of a copy of the within motion by the receipt of a copy thereof duly prepared and certified by A. M. Crawford, one of the attorneys, Counsel for Defendants is hereby admitted in said County and State on this 3rd day of September, 1914.

EDWARD F. TREADWELL,  
*Attorney, Counsel for the Complainant.*

Filed September 3, 1914. G. H. Marsh, Clerk.

50 And afterwards, to wit, on Thursday, the 3rd day of September, 1914, the same being the 52nd Judicial day of the Regular July, Term of said Court; Present: the Honorable William B. Gilbert, United States Circuit Judge, the Honorable Charles E. Wolverton and the Honorable Robert S. Bean, United States District Judges, the following proceedings were had in said cause, to wit:

51 In the District Court of the United States for the District of Oregon.

No. 6463.

PACIFIC LIVESTOCK COMPANY

v.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon, et al.

SEPTEMBER 3, 1914.

Now, at this day, come the plaintiff by Mr. Edward F. Treadwell and Mr. John L. Rand, of counsel, and the defendants by Mr. A. M. Crawford, Mr. C. B. McConnell and Mr. George T. Cochran, of counsel; whereupon this cause comes on to be heard upon the application of said plaintiff for an injunction pendente lite and upon the motion now filed herein by said defendants to strike out the bill of complaint. And the court having heard the arguments of counsel, and having heard Mr. Oliver P. Morton, Special Counsel for the United States Reclamation Service, appearing *amicus curiæ*, will advise thereof.

52 And afterwards, to wit, on the 28th day of September, 1914, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

53 In the District Court of the United States for the District of Oregon.

No. 6463.

PACIFIC LIVESTOCK COMPANY, a Corporation, Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a Corporation); Silvies River Irrigation Company (a Corporation), and William Hanley Company (a Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

Edward F. Treadwell, of San Francisco, Cal., Attorney for Complainant.

Emmons & Webster, Portland, Oregon, and

J. W. Biggs, of Burns, Oregon, Attorney for Sitz, Otley and Hayes.

Wood, Montague & Hunt, Portland, Oregon, and Emmons & Webster, Portland for Harney Valley Improvement Company, Silvies River Irrigation Company, William Hanley Company.

A. M. Crawford, Salem, Oregon, for Lewis.

A. M. Crawford and C. B. McConnell, for Cole and Cole and McConnell.

Oliver P. Morton, District Counsel, U. S. Reclamation Service, Portland Amicus Curiae.

George T. Cochran, La Grande, Oregon, in proper person.

Before Gilbert, Circuit Judge, and Wolverton and Bean, District Judges.

BEAN, *District Judge*:

This is an application for a preliminary injunction in a suit brought by the complainant a California corporation, against the Oregon State Water Board and others to enjoin and restrain further proceedings before the Water Board in the matter of determining the relative rights of more than two hundred users of the waters of Silvies River in this state.

54 The proceedings were regularly initiated before and by the Water Board in November, 1911, under the legislative act of 1909 (Laws of Oregon, page 319) providing for the control, disposition and use, and the determination of existing rights to the use of the waters within the state. Notices were regularly served upon the various claimants, including the complainant, as required by law, and within the time fixed therein the complainant filed with the Water Board a petition and bond for removal of the proceedings to this court on the ground of diversity of citizenship, but the court declined to assume jurisdiction, and the matter was remanded to the state tribunal. (In re Silvies River, 199 Fed. 495.)

The complainant thereafter filed its claim to the use of the waters

of the stream with the Water Board, paying the fees therefor required by law, and thereafter the Board gave notice to the various claimants that it would at a certain time proceed to the taking of testimony in support of such claims and the contests arising thereon.

The complainant thereupon commenced this suit to enjoin the proceedings on the ground (1) that the matter had been duly and regularly removed to it by this court and therefore the state tribunal had no right to proceed further in the matter. (2) That prior to the institution of the proceedings before the State Board complainant had commenced suits in this court against the Harney Valley Improvement Company and the Silvies River Irrigation Company, and the William Hanley Company, alleging that such corporations threatened to take and divert from the lands of the complainant a large amount of water to which it was entitled, and praying for an injunction; that issues were joined in such suits and that they are now pending and undetermined in this court. And (3) that the act of the legislature of Oregon creating the Water Board and prescribing its power and duties is violative of the Federal Constitution insofar as it undertakes to vest in the Board the power to hear evidence and determine the rights of the claimants to the water, because it deprives

them of their property without due process of law and denies  
55 them adequate judicial protection.

Whenever a suit commenced in a state court has been legally removed to the federal court the latter may, when necessary protect its own jurisdiction or render effective its decree, enjoin further proceedings in the state court. (Dietzsch vs. Huidekover, 103 U. S. 494. French vs. Hay, 22 Wall. 250. Wagner vs. Deake, 31 Fed. 849. Abeel vs. Culberson, 56 Fed. 329.) But in this matter the court has refused to assume jurisdiction on the ground that it was not removable, and a bill in equity is not the proper method to review its judgment.

Nor is there any doubt of the authority of a court of the United States to grant an injunction to stay proceedings in a state court to protect its own prior jurisdiction (Cen. Trust Co. vs. Western N. C. R. Co. 112 Fed. 471) but no such necessity exists here. The matters involved in the two proceedings are essentially different. That before the State Board is to ascertain, determine and fix the relative rights of all claimants, including the complainant, to the use of water from a common source, while the purpose of the suits pending in this court is to enjoin threatened interference by certain parties with the complainant's use of the water, and in our judgment, is not a bar to the proceedings before the state tribunal, nor does it prevent the state authorities from ascertaining and determining the relative rights of the claimants as provided in the state law, whether their conclusions, if they have to come to issue here, may or may not be binding on this court. (Insurance Co. vs. Brune's Assignee, 96 U. S. 588; Sperry & Hutchinson vs. Tacoma, 190 Fed. 682.) In one of the cases referred to the matter involved is now before the Water Board in pursuance thereof by direction of the court of Appeals. (Pacific L. Co. vs. Silvies R. Ir. Co. 200 Fed. 487.)

The provisions of the Oregon Water Law are stated somewhat in

detail in the opinion of the court on the motion to remand and need not be repeated here. It is sufficient for present purposes to add that section 17 thereof provides that at the time of the submission of proof of appropriation or at the time of taking testimony for the

56 determination of rights to water the Division Superintendent shall collect from each claimant or owner a fee of one dollar for recording the water right certificate, when issued, in the office of the County Clerk, and an additional fee of fifteen cents for each acre of irrigated land up to and including one hundred acres, and five cents per acre for each acre in excess of one hundred acres up to and including one thousand acres, and one cent each for each acre in excess of one thousand. And Section 21 requires in case of a contest, a deposit of five dollars from each party for each day the superintendent shall be engaged in taking testimony, to be refunded to the party in case the contest is decided in his favor. All other deposits and the fees provided by Section 17 are to be paid into the state treasury.

The state statute provides for notice to the various claimants of every step in the proceedings before the Water Board and gives them an opportunity to be heard, to produce testimony in support of their claims, and such contests as they may initiate. It also requires the determination of the Board and the original testimony taken by it to be filed with the State Court for its consideration and gives the parties thirty days thereafter in which to file exceptions to the determination of the Board, provides that they may be heard by counsel upon the consideration of such exceptions, that the court may if necessary remand the case to the Board for further evidence, and after a final hearing the court shall enter a decree affirming or modifying the orders of the Board, from which decree an appeal may be taken to the Supreme Court in like manner and effect as in other cases in equity. It thus furnishes interested parties not only adequate opportunity to be heard before the Water Board but provides for a judicial review by the courts before the determination becomes final, and therefore is not a denial of due process of law or the equal protection of the laws. (O. R. R. & N. Co. v. Fairchild, 224 U. S. 510.)

57 Laws governing the regulation and distribution of water and providing for the determination of the rights of the respective claimants thereto, similar in many respects to the Oregon statute, are in force in several of the arid states and as far as we are advised the universal holding of the courts where the question has been judicially determined is that the Water Board or officer charged with the duty of executing such laws is an administrative body or officer clothed with certain quasi-judicial powers necessary to enable it or him to discharge such administrative duties, and the proceedings before the Board or officer are not judicial and do not deprive the claimant of his property or water right without due process of law, since provision is made for resort to the courts by a dissatisfied claimant. The question is ably and satisfactorily discussed in Farmer In. vs. Carpenter (61 Pae. 258), Crawford Co. vs. Hathaway (N. W. 93 N. W. 781), McCook Ingales Co. vs. Cross (102 N. W.

249) and Ormsby vs. Kearney recently decided by the Supreme Court of Nevada, and it would be mere reiteration to attempt to add anything to what has already been said on the subject in the opinion on the motion to remand.

It is claimed that since the statute provides that any party who fails to appear after notice and submit to the Water Board proof of his claim shall be barred from subsequently asserting any rights thereafter acquired, the provision requiring him to pay a fee for so doing is in effect depriving him of his property without due process of law. It is not necessary for us to determine that question in this case. The bill of complaint shows that the complainant has paid the required fee and filed its claim before the Board and therefore is not being deprived of any right it may have to the waters of the stream. The other probable expenses referred to in the bill, such as attorneys' fees and cost or procuring evidence on behalf of the complainant, are not required by the statute to be paid or incurred

58 but are within the control of the complainant and as such may be incident to any proceedings in which it deems its interests are involved. Moreover if the provisions requiring a payment of fees by a claimant as a condition to asserting his rights to the use of the water is void, it is so clearly separable from the other provisions of the statute as not to render the whole act invalid. (Berea College vs. Ky. 211 U. S. 45). It is analogous to a penalty provided for violation of a law which does not render the entire law void, where it is not unreasonable to believe that the law-making power would have adopted the statute without the penalty. (Raegen vs. Farmers L. & T., 154 U. S. 362. Flint vs. Stone Tracey Co., 220 U. S. 107.)

It follows that the injunction should be denied and it is so ordered.

Filed September 28, 1914. G. H. Marsh, Clerk.

59 And afterwards, to wit, on Monday, the 28th day of September, 1914, the same being the 73rd Judicial day of the Regular July Term of said Court; Present: the Honorable Robert S. Bean United States District Judge presiding, the following proceedings were had in said cause, to-wit:

60 In the District Court of the United States for the District of Oregon.

No. 6463.

PACIFIC LIVESTOCK COMPANY, a Corporation, Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon; C. B.  
McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
provement Company (a Corporation); Silvies River Irrigation  
Company (a Corporation), and William Hanley Company (a Cor-  
poration); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

SEPTEMBER 28, 1914.

This cause was heard before the Honorable William B. Gilbert,  
United States Circuit Judge, and the Honorable Charles E. Wolver-  
ton and the Honorable Robert S. Bean, United States District Judges,  
upon the application of the plaintiff for a preliminary injunction  
herein, and was argued by Mr. Edward F. Treadwell and Mr. John  
L. Rand, of counsel for the plaintiff and by Mr. A. M. Crawford, Mr.  
C. B. McConnell and Mr. George T. Cochran, of counsel for the de-  
fendants; upon consideration whereof, it is Ordered and adjudged  
that said motion for preliminary injunction be, and the same is  
hereby denied.

R. S. BEAN, Judge.

Filed September 28, 1914. G. H. Marsh, Clerk.

61 And afterwards, to wit, on Monday, the 26th day of Octo-  
ber, 1914, the same being the 97th Judicial day of the Regu-  
lar July term of said Court; Present: the Honorable Robert S. Bean,  
United States District Judge presiding, the following proceedings  
were had in said cause, to-wit:

62 In the United States District Court for the District of Oregon.

No. 6463.

PACIFIC LIVE STOCK COMPANY (a Corporation), Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon; C. B.  
McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
provement Company (a Corporation); Silvies River Irrigation  
Company (a Corporation), and William Hanley Company (a Cor-  
poration); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Decree.*

In the above entitled suit, all of the defendants having appeared  
in said suit and filed their several motions to dismiss said suit, and

said bill of complaint, and said motions having been submitted to the court on said bill of complaint and said motions having been granted;

Now, therefore, by reason of the law and the facts aforesaid it is by the court considered, ordered, adjudged and decreed that complain-t take nothing by its said suit and that the said suit be, and the same hereby is dismissed, and that defendants recover their costs of suit herein, taxed at the sum of — Dollars.

Done in open court this 26th day of October, 1914.

R. S. BEAN,  
*District Judge.*

Filed October 26, 1914. G. H. Marsh, Clerk.

63 And afterwards, to wit, on the 26th day of October, 1914, there was duly filed in said Court, a Petition for Appeal, in words and figures as follows, to wit:

64 In the United States District Court for the District of Oregon.

No. 6463.

PACIFIC LIVE STOCK COMPANY (a Corporation), Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a Corporation); Silvies River Irrigation Company (a Corporation), and William Hanley Company (a Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

To the Honorable the District Court of the United States for the District of Oregon:

The above named complainant in the above entitled cause, Pacific Livestock Company (a corporation), conceiving itself aggrieved by the final decree heretofore made and entered in the above entitled cause, desires to appeal to the Supreme Court of the United States from the said final decree and respectfully petitions this court for an order allowing the said complainant to prosecute an appeal to the Honorable the Supreme Court of the United States from the said decree, and that said court also make an order fixing the amount of security which the said appellant shall give and furnish upon said appeal, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

JOHN L. RAND,  
EDWARD F. TREADWELL,  
*Solicitors for Complainant.*

Filed October 26, 1914. G. H. Marsh, Clerk.

65 And afterwards, to wit, on the 26th day of October, 1914, there was duly filed in said Court, an Assignment of Errors in words and figures as follows, to wit:

66 In the United States District Court for the District of Oregon.  
No. 6463.

PACIFIC LIVE STOCK COMPANY (a Corporation), Complainant,  
vs.

JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN, Constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole, and Leonard Cole; Harney Valley Improvement Company (a Corporation); Silvies River Irrigation Company (a Corporation), and William Hanley Company (a Corporation); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

*Assignment of Errors.*

Comes now the complainant in the above entitled cause and files the following assignment of errors upon which it will rely upon its appeal from the final decree heretofore rendered in said cause:

1. That the said court erred in sustaining and allowing the several motions of the defendants to dismiss the said suit and to dismiss the said bill of complaint.
2. The court erred in holding that the said bill of complaint did not state facts sufficient to constitute a cause of suit in favor of complainant and against defendants.
3. The court erred in holding that the proceeding referred to in said bill of complaint had not been removed into the District Court of the United States for the District of Oregon.
4. The court erred in refusing to protect its prior jurisdiction in the cases pending in said court and referred to in said bill of complaint.
5. The court erred in holding that the acts alleged in said 67 complaint do not deprive complainant of its property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States.
6. The court erred in holding that the proceedings alleged in said complaint did not deprive complainant of the equal protection of the law guaranteed to it by the fourteenth amendment to the Constitution of the United States.
7. The court erred in holding that the acts alleged in said complaint did not constitute the taking of complainant's property for a public use without compensation in violation of the fourteenth amendment to the Constitution of the United States.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays a reversal of the final decree herein.

JOHN L. RAND,  
EDWARD F. TREADWELL,  
*Solicitors for Complainant.*

Filed October 26, 1914, G. H. Marsh, Clerk.

68 And afterwards, to wit, on the 26th day of October, 1914, there was duly filed in said Court, a Bond on Appeal, in words and figures as follows, to wit:

69 Know all men by these presents that we, Pacific Live Stock Company (a corporation), as principal and United States Fidelity & Guaranty Company, as surety are held and firmly bound unto the defendants John H. Lewis, James T. Chinnock and George T. Cochran, constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole and Leonard Cole; Harney Valley Improvement Company (a corporation), Silvies River Irrigation Company (a corporation), and William Hanley Company (a corporation) R. R. Sitz, Fred Otley and M. B. Hayes in the full and just sum of five hundred (500) dollars, to be paid to the said John H. Lewis, James T. Chinnock and George T. Cochran, constituting the State Water Board of the State of Oregon, C. B. McConnell, Emory Cole and Leonard Cole; Harney Valley Improvement Company (a corporation), Silvies River Irrigation Company (a corporation), and William Hanley Company (a corporation), R. R. Sitz, Fred Otley and M. B. Hayes, their successors and assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of October, 1914.

70 Whereas the Pacific Livestock Company is about to petition the District Court of the United States, for the District of Oregon, to grant an appeal from the final decree entered in said court in a case therein pending entitled Pacific Livestock Company (a corporation) Complainant, vs. John H. Lewis, et al., defendants.

Now, the condition of the above obligation is such that if the Pacific Livestock Company shall prosecute the said appeal to effect, and if it fails to make its plea good shall answer all costs which may be awarded against it, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.]

PACIFIC LIVESTOCK COMPANY,  
By C. Z. MERRITT, *Secretary.*

[SEAL.]

UNITED STATES FIDELITY &  
GUARANTY CO.,

By DOUGLAS R. TATE,

*Its Attorney in Fact,*  
*Surety.*

Filed October 26, 1914, G. H. Marsh, Clerk.

71 And afterwards, to wit, on Monday, the 26th day of October, 1914, the same being the 97th judicial day of the Regular July Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

72 In the United States District Court for the District of Oregon.  
No. 6463.PACIFIC LIVE-STOCK COMPANY (a Corporation), Complainants,  
vs.JOHN H. LEWIS, JAMES T. CHINNOCK, and GEORGE T. COCHRAN,  
Constituting the State Water Board of the State of Oregon; C. B.  
McConnell, Emory Cole, and Leonard Cole; Harney Valley Im-  
provement Company (a Corporation); Silvies River Irrigation  
Company (a Corporation), and William Hanley Company (a Cor-  
poration); R. R. Sitz, Fred Otley, and M. B. Hayes, Defendants.

At a stated term, to-wit: the July Term 1914, of the District Court of the United States of America of the Ninth Circuit, in and for the District of Oregon, held at the court room in the City of Portland, on the 26th day of October, 1914, Hon. R. S. Bean, District Judge.

Upon reading and filing the petition of complain-t herein for an order allowing an appeal from the final decree herein to the Supreme Court of the United States, and the filing herein of the assignment of errors relied upon, and an undertaking on appeal duly approved by the court, it is ordered that an appeal to the Supreme Court of the United States from the final decree herein be, and the same hereby is allowed, and that a transcript of the record be forth-  
with transmitted to the Supreme Court of the United States, and the said bond on appeal is hereby approved.

Done in open court this 26th day of October, 1914.

R. S. BEAN,  
*District Judge.*

Filed Oct. 26, 1914, G. H. Marsh, Clerk.

73 UNITED STATES OF AMERICA,  
*District of Oregon, ss:*

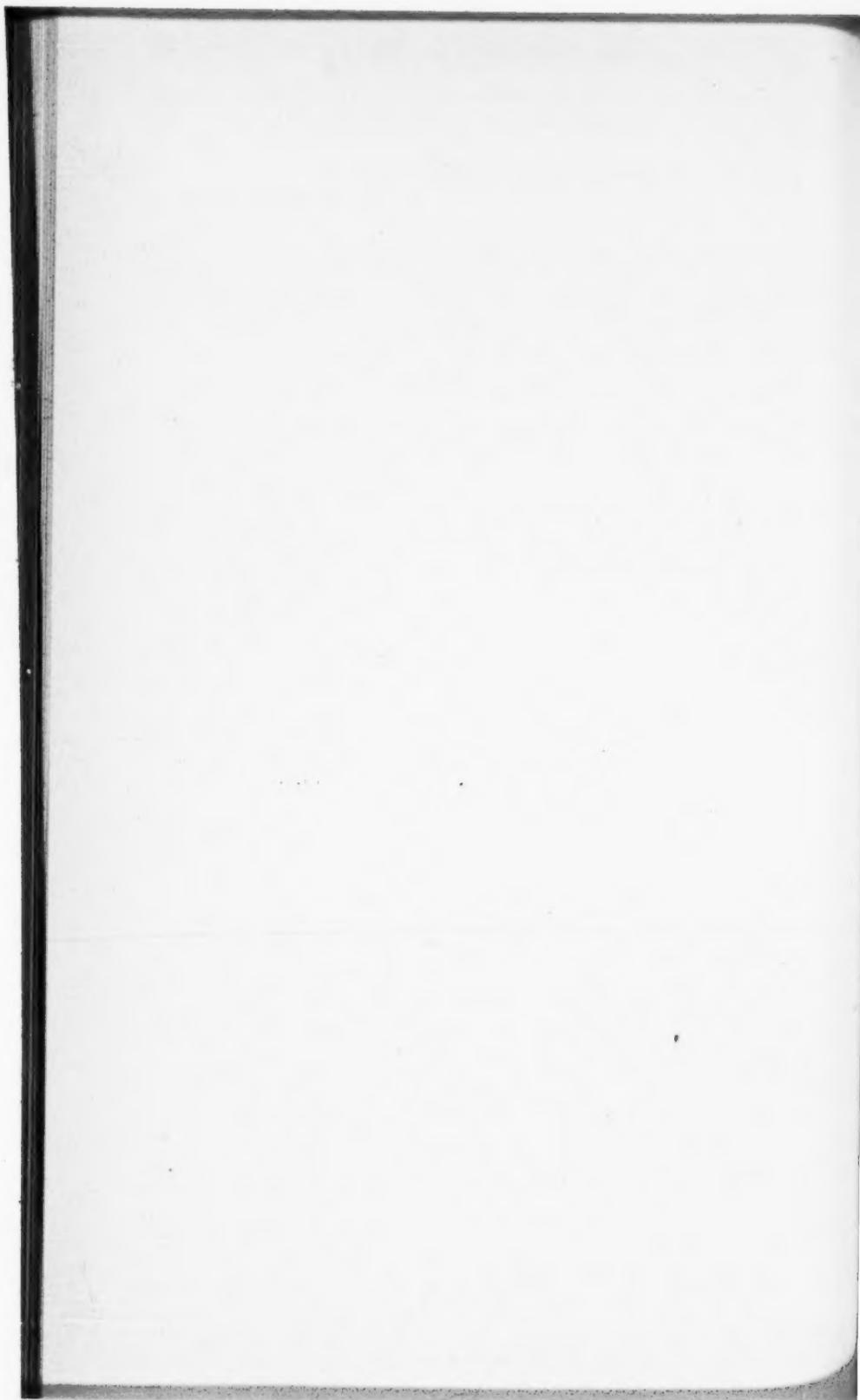
I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 72, constitute the transcript of record on appeal to the Supreme Court of the United States from the decree entered in the District Court of the United States for the District of Oregon, in the case in which the Pacific Livestock Company, a corporation, is the plaintiff and appellant, and John H. Lewis, James T. Chinnock and George T. Cochran, constituting the State Water Board of the State of Oregon; C. B. McConnell, Emory Cole and Leonard Cole; Harney Valley Improvement Company (a corporation); Silvies River Irrigation Company (a corporation) and William Hanley Company (a corporation), R. R. Sitz, Fred Otley and M. B. Hayes, are defendants and appellees, and that said transcript is a full, true and complete transcript of the records and proceedings had in said District Court in said cause, as the same appear of record and on file at my office and in my custody.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at Portland, in said District on the 7th day of November, 1914.

[Seal United States District Court, Oregon.]

G. H. MARSH, *Clerk.*

Endorsed on cover: File No. 24,468. Oregon D. C. U. S. Term No. 724. Pacific Live Stock Company, appellant, vs. John H. Lewis, James T. Chinnock, and George T. Cochran, constituting the State Water Board of the State of Oregon, et al. Filed December 16th, 1914. File No. 24,468.



MAR 16 1915

JAMES D. MAHER

CLERK

In the Supreme Court  
OF THE  
United States

OCTOBER TERM, 1914

PACIFIC LIVE STOCK COMPANY,

*Appellant,*

vs.

JOHN H. LEWIS, JAMES T. CHINNOCK and GEORGE  
T. COCHRAN, constituting the State Water  
Board of the State of Oregon, et al.,

*Appellees.*

Appeal from the District Court of the United States for the  
District of Oregon.

## MOTION AND NOTICE OF MOTION TO ADVANCE.

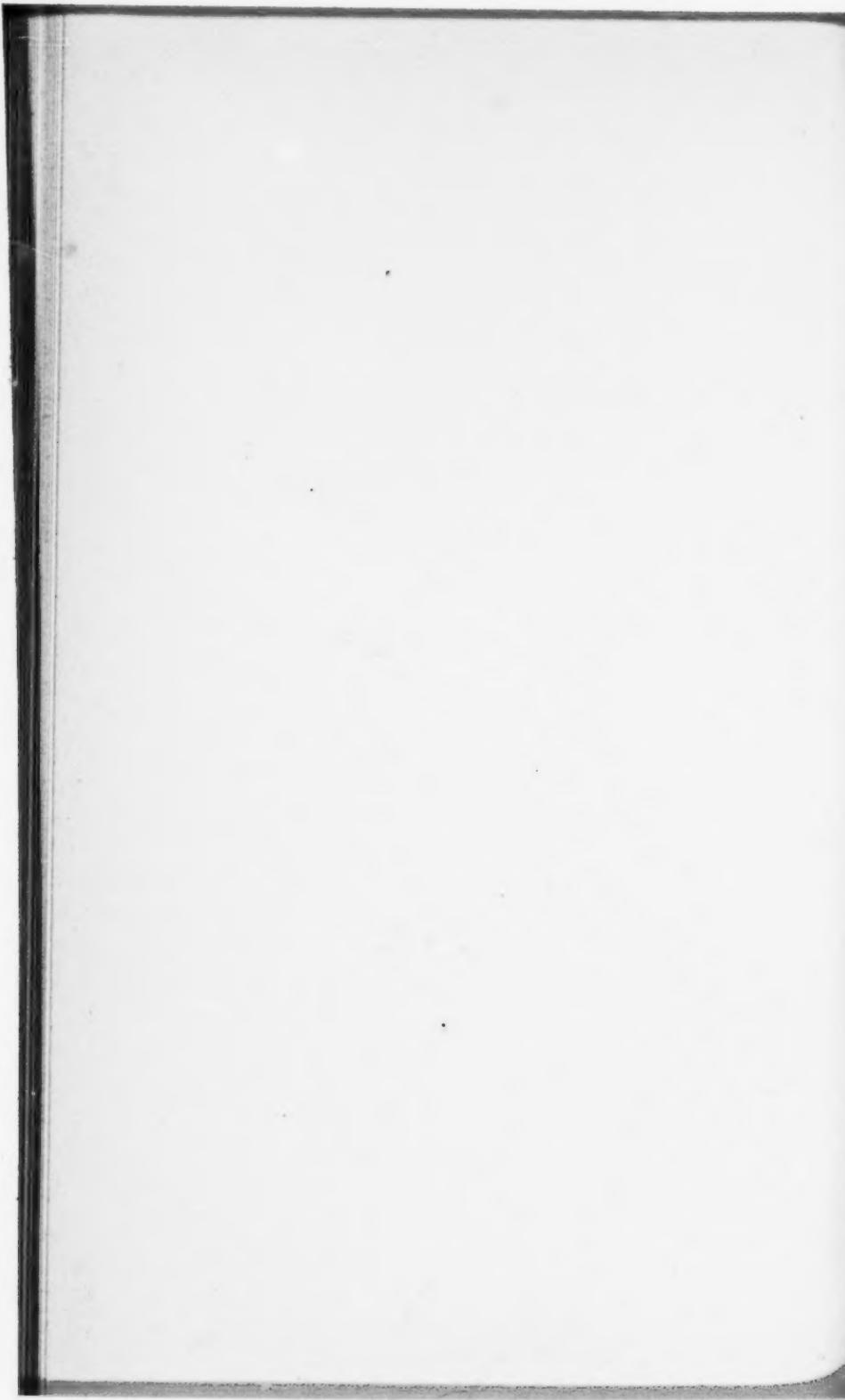
*Alex. Britton*  
*Evans Branson*  
~~A. B. Browne~~  
*J. W. Geary, Jr.*  
*of Counsel.*

EDWARD F. TREADWELL,  
*Solicitor for Appellant.*

Filed this..... day of March, 1915.

JAMES D. MAHER, Clerk.

By..... Deputy Clerk.



No. 724

**In the Supreme Court  
OF THE  
United States**

OCTOBER TERM, 1914

PACIFIC LIVE STOCK COMPANY,

*Appellant,*

vs.

JOHN H. LEWIS, JAMES T. CHINNOCK and GEORGE  
T. COCHRAN, constituting the State Water  
Board of the State of Oregon, et al.,

*Appellees.*

Appeal from the District Court of the United States for the  
District of Oregon.

**MOTION TO ADVANCE.**

Now comes the above named appellant, and respectfully moves this honorable court to advance this cause for hearing to such an extent as may be consistent with the docket of the court.

The suit is brought against certain officials of the State of Oregon for the purpose of enjoining certain

proceedings, and it appears that if those proceedings are taken, they will cost the appellant the sum of fifty thousand dollars (Transcript folio 17). As a demurrer to the bill was sustained, unless the appeal is promptly heard, the appellant will to a large extent lose the benefit thereof, if the state officials proceed notwithstanding the appeal, and on the other hand the state officials will be seriously delayed in the performance of their duties if the case be not advanced and they await its termination.

The questions involved are of large public interest, and we believe that the appellees will welcome an early hearing in the case.

Respectfully submitted,

*Alex. Britton*  
*Evans Browne*  
*A. D. Browne,*  
*F. W. Clements.*  
*Of Counsel.*

EDWARD F. TREADWELL,

*Solicitor for Appellant.*

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#### NOTICE OF MOTION TO ADVANCE.

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*To the appellees in the above entitled cause, and Messrs.*

*A. M. Crawford, C. E. S. Wood, J. W. Biggs, their  
 solicitors:*

You will please take notice that on Monday, the twenty-ninth day of March, 1915, at twelve o'clock noon of said day, the appellant in the above entitled cause will submit the foregoing motion to said court

at the courtroom thereof in the City of Washington,  
in the District of Columbia.

EDWARD F. TREADWELL,

*Solicitor for Appellant.*

State of California,  
City and County of San Francisco.—ss.

Delger Trowbridge, being first duly sworn deposes and says that he is a clerk in the office of Edward F. Treadwell, solicitor for the appellant in the above entitled suit, that the office of said Edward F. Treadwell is in the City and County of San Francisco, and the office of A. M. Crawford is in the City of Salem, State of Oregon; the office of C. E. S. Wood is in the City of Portland, State of Oregon, and the office of J. W. Biggs is at Burns, Oregon; that on the 8th day of March, 1915, he deposited copies of the foregoing Motion and Notice in the United States Post Office in the City and County of San Francisco, State of California, in sealed envelopes addressed to said A. W. Crawford, Salem, Oregon; C. E. S. Wood, Portland, Oregon, and J. W. Biggs, Burns, Oregon, with the postage thereon prepaid.

DELGER TROWBRIDGE.

Subscribed and sworn to before me this 8th day of March, 1915.

JAMES MASON,

Notary Public in and for the City and County  
of San Francisco, State of California.